IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 3285 OF 2004

Abu Dhabi Commercial Bank Ltd. ... Petitioner.
Versus
Nandkishore Kagliwal & Ors.. ... Respondents.

Mr.Nitin Thakkar , Sr. Counsel with Mr. Shekhar Shete i/by M/s.M.S.Bodhanwala & Co., for the Petitioner.
Mr.Tushar Goradia with Mr. H.Nikumb for Respondent No.1.

CORAM : SWATANTER KUMAR, C.J. &
DR.D.Y.CHANDRACHUD, J.

DATED : 19TH SEPTEMBER, 2007.

P.C.:

By this writ petition the petitioner Bank has impugned the order dated 12th July, 2004 passed by the Debt Recovery Appellate Tribunal at Mumbai, whereby it disposed of Misc. Appeal No. 322 of 2003 which was preferred by the Bank against the order passed by the Debt Recovery Tribunal dated 11th August, 2003.

2. Respondent No.1 herein was admittedly a party to the Original Application filed for recovery of money. However, no specific relief in the prayer clause has been prayed against this respondent. It may be noted

that in the application, to which even a written statement was filed, allegations were made that the said respondent has executed a guarantee deed. This fact was not disputed in the written statement; however, with an exception that the liability was limited to Rs.1.5 crores. In the written statement, an objection has also been taken that no relief has been claimed against the said respondent. Despite this no steps were taken by the Bank in the Original Application. However, the Debt Recovery Tribunal has passed a judgment and decree for recovery of amount against all the parties to the application, including respondent No.1 to this petition.

3. Aggrieved from this order of the Debt Recovery Tribunal, a review application was filed by respondent No.1 herein seeking review of the judgment and decree passed against him by the Debt Recovery Tribunal. This application was stated to be barred by time in the reply filed on behalf of the Bank. However, the Debt Recovery Tribunal by an order dated 11th August, 2003 reviewed its earlier order and held that no decree could be passed against respondent No.1 herein. As already noted, even the Debt Recovery Appellate

Tribunal sustained the order passed by the Debt Recovery Tribunal resulting in filing of the present writ petition.

4. In light of the above facts appearing from the records, various contentions have been raised before us by the learned Counsel appearing for the respective parties. However, it is not necessary for us to notice them in greater detail. Suffice it to note that even the plea of limitation in filing the review application as well as the application for amendment which was filed by the Bank before the Debt Recovery Appellate Tribunal, as claimed, by that time were hit by the law of limitation have been raised. It cannot be disputed that the Debt Recovery Appellate Tribunal did not consider the question of limitation raised by either party and even the Debt Recovery Tribunal has not gone into the question of limitation. These are the questions which go to the very root of the matter and further more the Tribunal was expected to decide the application on all pleas of law and fact raised by the parties. Having failed to decide the matter in its entirety, the order of the Debt Recovery Appellate Tribunal certainly suffers from the error apparent on

the face of the record and, particularly, it has failed to exercise the jurisdiction which was lawfully vested in it. The plea of amendment raised by the Bank and the plea of limitation in filing of the review application were required to be considered by the Debt Recovery Appellate Tribunal while the plea of limitation raised by the defendant in the original application and respondent No.1 herein was expected to be also discussed by the Appellate Tribunal.

5. In light of the above, we think it to be just, fair and equitable that the order dated 12th July, 2004 should be set aside, the case be remanded to the Debt Recovery Appellate Tribunal, Mumbai, for fresh adjudication in accordance with law and in light of the observations made above. The question as to whether a decree passed by the Debt Recovery Tribunal against respondent No.1 herein would stand or not would also be gone into by the Appellate Tribunal.

6. This petition is, accordingly, disposed of in terms aforesaid.

7. We make it clear that this order is without

prejudice to the rights and contentions of the parties. Both the parties would be at liberty to raise such pleas before the Appellate Tribunal and the observations made in this order would in no way influence the Appellate Tribunal.

8. Interim order dated 31st January, 2005 shall continue till the order impugned is varied or vacated by the Appellate Tribunal.

9. Both the parties are left to bear their own costs.

Sd/-

CHIEF JUSTICE

Sd/-

DR.D.Y.CHANDRACHUD, J.